

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Valérie DE LA POTERIE et al.)	Group Art Unit: 1619
)	
Application No.: 10/526,675)	Examiner: VENKAT, Jyothsna A.
)	
Filed: September 26, 2005)	Confirmation No.: 3249
)	
For: MAKE-UP COMPOSITION)	
FOR KERATIN FIBERS SUCH AS)	
EYELASHES)	<u>VIA EFS-WEB</u>

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Office the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the U.S. patents and office actions from co-pending applications, are not enclosed as they are available on the Image File Wrapper on PAIR. A copy of the foreign reference is enclosed.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another Examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. *See also* M.P.E.P. § 2001.06(b). Accordingly, although Applicants are not representing that the Office Actions in the co-pending applications are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed substantive Office Actions from co-pending applications on the attached form PTO-SB-08.

Applicants respectfully request that the Office consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

With respect to the non-English language documents, Applicant submits the following remarks:

1. EP 1 201 222 - This document is believed to be related to U.S. Patent No. 6,946,123, cited on the attached Form PTO/SB/08.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that the listed document is material or constitutes "prior art." If the Office applies document as prior art against any claim in the application and Applicant determines that the cited document does not constitute

"prior art" under United States law, Applicants reserve the right to present to the U.S. Patent and Trademark Office the relevant facts and law regarding the appropriate status of such document.

Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed document, should the document be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: Kimberly D. Smith
Kimberly D. Smith
Reg. No. 63,219

Date: October 26, 2010